

ATTACHMENT C: SPECIAL TERMS AND CONDITIONS

Federal Funds

The Capital Area Emergency Communications District (CAECD) received a grant from the State of Texas administered by the Commission on State Emergency Communications (CSEC) to improve and install Next Generation 9-1-1 compliant systems and capabilities.

The Capital Area Council of Governments (CAPCOG) is identified as the authorized agent and representative of the CAECD and will be the contracting entity.

This procurement will be funded using a grant in the amount of \$8.8M that CAECD received from the Commission on State Emergency Communications (CSEC) from funds from the American Rescue Plan Act of 2021 (“ARPA”) to support the goal of achieving statewide deployment of Next-Generation 9-1-1 (NG 9-1-1) by September 2025. This grant’s performance period ends December 31, 2024, so it is crucial that CONTRACTOR completes all phases of the project no later than December 31, 2024.

Procurement Standards

To the extent that costs under this project are paid for with federal funding, procurement procedures must conform to applicable federal law, including [2 C.F.R Part 200](#), specifically §§200.318 - 200.327:

- [§200.318: General procurement standards](#)
- [§200.319: Competition](#)
- [§200.320: Methods of procurement to be followed](#)
- [§200.321: Contracting small and minority businesses, women’s business enterprises, and labor area surplus firms](#)
- [§200.322: Domestic preferences for procurements](#)
- [§200.323: Procurement of recovered materials](#)
- [§200.324: Contract cost and price](#)
- [§200.325: Federal awarding agency or pass-through entity review](#)
- [§200.326: Bonding requirements](#)
- [§200.327: Contract provisions \(see Appendix II to Part 200\)](#)

Equipment

CAECD will take title to all procured “equipment,” as defined in 2 CFR §200.33, purchased under this procurement.

Amendment

The grant agreement with CSEC includes a provision that states that, “it is understood and agreed by Parties hereto, that changes in local, state, and federal rules, regulations or laws applicable hereto, may occur during the term of this Grant Agreement and that any such changes shall be automatically be incorporated into this Grant Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.”

In the event that any such change occurs and it would affect the contract between CAPCOG and CONTRACTOR, CONTRACTOR agrees that CAPCOG has the right to unilaterally issue an addendum to the contract in order to enable it to comply with the new rule, regulation, or law.

Indemnification

CONTRACTOR shall defend, indemnify and hold harmless CAPCOG/CAECD, the state of Texas, and CSEC, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of CONTRACTOR or CONTRACTOR's agents, employees, subcontractors, order fulfillers, or suppliers of subcontractors in the execution of performance of the contract and any procurements and purchase orders issued under the contract. The defense shall be coordinated by CONTRACTOR with CAPCOG/CAECD when CAPCOG/CAECD is named defendants in any lawsuit and the Office of the Texas Attorney General when Texas State Agencies, including CSEC, are named defendants in any lawsuit, and CONTRACTOR may not agree to any settlement without first obtaining the concurrence from the Office of Attorney General. CONTRACTOR and CAPCOG/CAECD agrees to furnish timely written notice of any such claim.

Conflict of Interest

CONTRACTOR must disclose in writing to CAPCOG any potential conflict of interest affecting the awarded funds in accordance with 2 CFR §200.112.

Fraud, Waste, and Abuse

In the event CONTRACTOR becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received from CAPCOG that is made against CONTRACTOR, CONTRACTOR is required to immediately notify CAPCOG of said allegation or finding and must also promptly refer to CAPCOG any credible evidence that a principal, employee, agent, grantee, or other person has – (1) submitted a claim for award funds that violates the False Claims Act, 31 U.S.C. §§3729-3733; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. CONTRACTOR must also immediately notify CAPCOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements. CONTRACTOR must notify the local prosecutor's office of any possible criminal violations. CONTRACTOR must immediately notify the local prosecutor's office of any possible criminal violations. CONTRACTOR must immediately notify CAPCOG in writing if a project or project personnel become involved in any litigation, whether civil or criminal, and the CONTRACTOR must immediately forward a copy of any demand, notices, subpoenas, lawsuits, or indictments to CAPCOG. CONTRACTOR is expected to report any possible fraudulent or dishonest acts, waste, or abuse to CAPCOG's Deputy Executive Director at (512) 916-6043 or in writing to: Deputy Executive Director, Capital Area Council of Governments, 6800 Burleson Road, Building 310, Suite 165, Austin, TX 78744.

Termination

CAPCOG may, at its sole discretion, terminate this contract, without recourse, liability, or penalty against CAPCOG, upon written notice to CONTRACTOR. In the event CONTRACTOR fails to perform or comply with an obligation or a term, condition, or provision of this contract, CAPCOG may, upon written notice to grantee, terminate this contract for cause, without further notice or opportunity to cure. Such notification of Termination for Cause will state the effective date of such termination, and if no effective date is specified, the effective date will be the effective date of the notification.

CAPCOG and CONTRACTOR may mutually agree to terminate this contract. CAPCOG in its sole discretion will determine if, as part of the agreed termination, contractor is required to return any or all of the disbursed funds.

Clean Air Act

As required by CAECD's grant with CSEC and pursuant to Title 2 C.F.R. Appendix II to Part 200 Federal Rule (G), CONTRACTOR agrees to comply with all applicable standards, orders or regulations issues pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et. seq.* CONTRACTOR agrees to report each violation to CAECD and CSEC, and agrees that CSEC will, in turn, report each violation as required to assure notification of the Treasury, and the appropriate Environmental Protection Agency Regional Office. CONTRACTOR agrees to require inclusion of these requirements in each subcontract exceeding \$150000 financed in whole or in part with the federal assistance used as part of this procurement.

Federal Water Pollution Control Act

CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution control Act, as amended, 33 U.S.C. § 1251 *et. seq.* CONTRACTOR agrees to report each violation to CAECD and understands and agrees that CSEC will, in turn, report each violation to assure notification to the Treasury and the appropriate EPA Regional Office. CONTRACTOR agrees to include these requirements in each of CONTRACTOR's subcontracts or other form of agreement exceeding \$150,000 financed in whole or in part with federal assistance provided by Treasury.

Suspension and Debarment

This contract is a covered transaction for the purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 300. As such, CONTRACTOR is required to verify that none of CONTRACTOR's principals (as defined at C.F.R. § 180.995) or its affiliates (defined at C.F.R. § 180.905) may be excluded (defined at C.F.R. § 180.940) or disqualified (defined at C.F.R. § 180.935). Furthermore, CONTRACTOR must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

Any vendor that is suspended, debarred, or otherwise excluded pursuant to 31 C.F.R. § 19.300 is not eligible for consideration for this contract.

Byrd Anti-Lobbying Amendment

CONTRACTOR will certify on company letterhead the required certification (see Attachment 7 to CAECD's contract with CSEC) that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of congress, officer or employee of Congress, or an officer or employee of a Member of Congress in connection with obtaining any federal contract, grant, or other award covered by 31 U.S.C. §1352. CONTRACTOR will also require such certifications from any subcontractor receiving at least \$100,000 from this contract. CONTRACTOR shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal contract, grant, or other award covered by 31 U.S.C. §1352, and shall require such disclosure from any subcontractor receiving at least \$100,000 from this contract. CONTRACTOR shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award, and shall require such disclosure from any subcontractor receiving at least \$100,000 from this contract. CONTRACTOR shall forward any such certifications from lower-tier contracts to CAECD to forward to CSEC, which will in turn forward to the federal awarding agency.

Procurement of Recovered Materials

CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The Requirements of section 6002 include procuring only items designated in guidelines of the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a

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satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered material identified in the EPA guidelines. Additionally, if not already addressed, CONTRACTOR agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

CONTRACTOR and subcontractors are prohibited from obligating or expending Federal grant funds to 1) procure or obtain; 2) extend or renew a contract to procure or obtain; or 3) enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or critical technology as part of any system. As described in Public Law 115-232, section 889, covered communications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance, and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahau Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- See Public Law 115-232, section 889 for additional information.
- See also 2 CFR § 200.471.

This clause does not prohibit CONTRACTOR or subcontractors from providing:

- A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection agreements; or
- Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

By necessary implication and regulation, the prohibitions also do not apply to:

- Covered telecommunications equipment or services that:

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- Are not used as a substantial or essential component of any system, and
- Are not uses as critical technology of any system.
- Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

Reporting

In the event CONTRACTOR identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or CONTRACTOR is notified of such by a subcontractor at any tier or by any other source. CONTRACTOR shall report the information described in the next paragraph of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

CONTRACTOR shall report the following information:

- Within one business day from the date of such identification or notification: the contract number, the order number (2), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand, model number (original equipment manufacturer number, manufacturer part number, or wholesale number); item description, and any readily available information about mitigation actions undertaken or recommended.
- Within 10 business days of submitting the information above: any further available information about mitigation actions undertaken or recommended. In addition, CONTRACTOR shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

Carry-Down Provisions

CONTRACTOR shall insert the substance of this clause, including this pass-down provision, in all contracts, subcontracts, and other contractual instruments.

Domestic Preferences for Procurements

As appropriate and to the extent consistent with law, CONTRACTOR, to the greatest extent practicable under the portion of this contract funded by a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products). The preceding preference must be included by CONTRACTOR in any subcontracts or other agreements entered into as part of providing property and services to CAECD.

For the purposes of this section:

- “Produced in the United States” means, or iron and steel products, that all manufacturing processes, from the initial melting stages through the application of coatings, occurred in the United States.
- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics, and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus area Firms

Pursuant to Title 2 CFR Appendix II to Part 200 Federal Rule (M), CONTRACTOR agrees that if CONTRACTOR subcontracts any portion of the delivery or providing of property and services to CAECD, CONTRACTOR must make good-faith, reasonable efforts to take affirmative steps provided in 2 CFR § 200.321(b)(1) – (5).